

Form 1

NATIONAL RAILROAD ADJUSTMENT BOARD
SECOND DIVISION

Award No. 12040
Docket No. 11662
91-2-88-2-158

The Second Division consisted of the regular members and in addition Referee Lamont E. Stallworth when award was rendered.

PARTIES TO DISPUTE: (Brotherhood Railway Carmen/ Division of TCU
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(Boston and Maine Corporation

STATEMENT OF CLAIM:

1. That the Boston and Maine Corporation violated the provisions of the controlling Agreement, namely Rules 112 and 113 and the posted and agreed to wreck crew list, on April 9, 1987 by not allowed the regularly assigned wreck crew to accompany the East Deerfield wrecker to a derailment at Bangor, Maine.

2. That accordingly, the Carrier additionally compensate Carman W. E. Fulton eight (8) hours at the time and one-half rate and five (5) hours and thirty (30) minutes at the double time rate of pay and Carman J. D. Hartnett five (5) hours and thirty (30) minutes at the time and one-half rate of pay for said violations.

FINDINGS:

The Second Division of the Adjustment Board, upon the whole record and all the evidence, finds that:

The carrier or carriers and the employe or employes involved in this dispute are respectively carrier and employes within the meaning of the Railway Labor Act as approved June 21, 1934.

This Division of the Adjustment Board has jurisdiction over the dispute involved herein.

Parties to said dispute waived right of appearance at hearing thereon.

This Claim arises from the same derailment on April 8, 1987, at Bangor, Maine, which has given rise to the Claims in Second Division Awards 12037 and 12038. In that incident, an engine derailed on the property of the Springfield Terminal Railway Company which, lacking the equipment necessary to clear the wreckage, contracted with the Carrier to use the Carrier's wrecker and some of the Carrier's wreck crew from East Deerfield, Massachusetts. One of the Carrier's carmen travelled with the wrecking equipment to serve as Crane Engineer. Three additional Carmen (two short of a regular crew) were sent some ten hours later by Carrier vehicle.

In Second Division Award 12037, the Organization sought compensation for the two East Deerfield Carmen, also the Claimants herein, who would have been called to accompany the Carrier's wrecker to Bangor if the Carrier had sent a full, regular crew. The Board sustained the Claim in Second Division Award 12037 based on Rules 112 and 113 which, we held, require the Carrier to send a full wreck crew if it sends anyone at all when its wrecker ventures outside of yard limits to clear a derailment. Rule 113 states:

"MAKE-UP WRECKING CREWS

When wrecking crews are called for wrecks or derailments outside of yard limits, the regularly assigned crew will accompany the outfit. For wrecks or derailments within yard limits, sufficient carmen will be called to perform the work."

In this Claim, the Organization seeks additional compensation for the same Claimants, as if they had not merely accompanied their three colleagues, but had accompanied the wrecker itself and the single Carman who travelled with it. Based upon the rationale which the Board has employed in deciding Second Division Awards 12037 and 12038 this Claim must also be sustained.

In those cases the Board observed that, when the Carrier's wrecker moves outside of yard limits, Rule 113 normally obliges the Carrier to send a full crew with the wrecker. However, we held that in a case like this, where the Carrier is functioning as a contractor to another carrier, the Carrier is not required to send a crew unless and until it accepts a request from its client to send crew members. As soon as it accepts request to send any crew members, though, the Carrier becomes obliged by Rule 113 to dispatch a full, regular crew.

This means that, in this instance, where the Carrier accepted a request to send at least one crew member to the Springfield Terminal property with the equipment itself, the Carrier should have sent all the regular crew members at the same time. Therefore, the Claimants are entitled to compensation as if they had been sent to Bangor at 1400 hours on April 9, 1987, when the wrecker and the first Carman departed the East Deerfield yard.

The Carrier argues that, even if the Board agrees with the Organization, this Claim should be denied because it is redundant, at least in part, of the Claim in Second Division Award 12037. We agree that the relief described above is encompassed within the Second Division Award 12037. However, that does not necessitate that this Claim be denied. In this Award the Board merely reiterates and clarifies what the Claimants are due but, in doing so, emphasizes that it does not intend that the Claimants receive a double recovery.

A W A R D

Claim sustained in accordance with the Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of Second Division

Attest:


Nancy J. Dever - Executive Secretary

Dated at Chicago, Illinois, this 1st day of May 1991.